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OGC REVIEW COMPLETED

29 September 1949

Authorized Certifying Officer
Attention: [redacted] 25X1A9A
Office of General Counsel

Quarters Allowances

1. Your memorandum of 27 June 1949 presented a number of questions for the consideration of this office. The problem, in general, involved the use of Confidential Funds for the payment of repairs and/or renovations and the rental of furniture for quarters overseas. In view of the rather extensive monetary consequences of a decision which is almost devoid of precedent, we have reviewed the matter for a longer than normal time.

2. Quarters allowances are authorized for Foreign Service personnel by Sec. 901 (1) of the Foreign Service Act of 1946 (22 USCA 1131 (1)), and for other Government personnel overseas by the Act of June 26, 1930 (5 USCA 118a) as amended, and the Independent Offices Appropriation Act of 1950 (P.L. 266,81st Congress). Executive Order 10011, dated October 22, 1948, delegated to the Secretary of State certain powers to prescribe regulations and approve those issued by the heads of other departments. The pertinent regulations are now coordinated and collected in the Standardized Government Civilian Allowance Regulations, and it is only to these that we can turn for any established regulatory guidance. Supplementing these for covert purposes, we have our own Confidential Funds Regulations, General Administrative Instructions, and interpretative legal memoranda.

3. The essential problem posed in your memorandum is whether the following overseas expenses may be reimbursed from Confidential Funds, provided that the estimated annual cost, inclusive of these expenses, does not exceed the maximum allowable quarters allowances prescribed by the Standardized Government Civilian Allowance Regulations (hereafter, SAR)):

(1) Repairs and/or renovations made by personnel in connection with the renting or leasing of quarters at an overseas post;

(2) Rental of furniture in connection with rented or leased quarters at an overseas post.

4. We understand that universal housing conditions are at an historically low ebb and that it is a landlord's market nearly everywhere throughout the world. By the same token, we appreciate the

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fact that local custom - prevailing from the competition among prospective tenants - has established the use of bonuses to the landlord in order to obtain a lease. These bonuses may take the form of "key" or "tea" money, exorbitant rentals, or the assumption by the tenant of certain contractual obligations which are normally met by the landlord. Repairs and renovations fall within the last category and we shall consider them as a condition precedent to occupancy of the premises. The rental of furniture may likewise be a condition imposed by the landlord or it may arise from a justifiable need on the tenant's part. For that reason, we shall treat it separately.

5. Although no reference is made to repairs or renovations in regard to "Quarters Allowances" or "rents" in the SAR, costs of repairs or renovations have been accepted by the Comptroller General when provision for them was specifically stipulated in the lease (15 Comp. Gen. 787). And while "rent" is not generally considered to include "alterations and improvements", there is no objection to the tenant's payments for such work when the contract requires it. (54 Corpus Juris pp. 383-384, RENT, § 5.) The supervening limitation imposed under the Economy Act (Act of June 30, 1932, 47 Stat 412, 40 USCA 278 (a)) is not applicable to the "foreign services". We believe our position is sound in assuming that adoption of the appropriate section of the Foreign Service Act and related regulations entitles us to the exemptions applicable to that service (even if under the quoted terminology, we werenot as an agency, included among the "foreign services"). In a situation much in point with our own, repairs to a foreign Embassy under provisions of a lease were considered a legitimate charge against "Contingent Expenses" of the Foreign Service by the Comptroller in 16 Comp. Gen. 639. Section 1.5 f. of the SAR defines "Living Quarters Allowance" as a grant to an employee to whom Government-owned or rented quarters, are not available. It is, by its nature, in lieu of such quarters, and it would be fastidious reasoning to say that a charge acceptable against one type of expenditure could not be approved when applied to a grant in lieu of that type. For that reason we believe that charges against repairs or renovations contained in a lease in connection with rental or leasing of overseas quarters is an allowable expense under quarters allowances. The Charge is, as stated above in paragraph 3, subject to the maximum limit of the SAR and should not be so flagrantly disproportionate to the total rental that it would be unreasonable to consider it justifiable as a cost of obtaining the quarters. While it is not a consistent legal requirement, it would be most advisable to have all leasing agreements in writing in order to forestall any confusion over terms of rental.

6. In regard to the rental of furniture by an employee, § 3.61 of the SAR states that the rate of quarters allowance granted an employee is an amount "for the rent of furnished or unfurnished living

quarters" (underscoring ours) or the maximum limit. Where an employee submits an estimate based on the cost of unfurnished quarters and discovers on arrival abroad that only furnished quarters are available, we believe there is clear justification for amending the estimate to include the additional cost of renting the furniture. Similarly, where the quarters are inadequately furnished by the lessor, there does not appear to be any objection to the rental of additional furniture to meet the tenant's needs. As long as the additional furniture is obtained to provide reasonable comfort and is actually used by the employee, this office cannot distinguish such charge from the acceptable one for quarters where furniture is supplied in ample quantity. The nature of the charge itself does not vary in proportion to the number of lessors. Although one person may provide the quarters, and others the furnishings, the overall charge retains its identity. We believe the same reasoning is applicable where additional furniture is required to supplement the employee's own - provided the quarters are not personally owned by the employee and come within the specific limitation of § 3.63 of the SAR. On the other hand, we assume there is no question of a rental charge for the use of an employee's own furniture which is shipped overseas at Government expense. By paying the transportation costs, the Government has fulfilled its aim of providing the employee with an opportunity to enjoy a living standard comparable to that found in the United States. This would not, however, exclude an allowance where supplemental furniture was required. You are correct in your understanding that the legal memorandum from this office which expanded the concept of rent to include furniture for [redacted] employees was restricted to the special local situation. The end result under the above criteria, however, could well be the same.

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7. While these standards are suggested for certain general situations, we appreciate the fact that problems will undoubtedly arise which require an authorization over and beyond even the more liberal approach we have indicated. In those cases, we can rely upon the special authority provided in GAI 19 and § 6.2 of the Confidential Funds Regulations. We should like to repeat that as basic conditions for allowing the subject expenses to be included in the Quarters Allowance, payment must be made from Confidential Funds for reasonable charges not in excess of the maximum allowances stipulated by the SAR. When it is impossible to accept the commitment as a normally reasonable charge or it is in excess of the maximum allowance, then we must take recourse to the authority for extraordinary cases.

8. To give you specific answers to the questions raised in your memorandum, we will take them in order. Unless otherwise indicated, our answer is predicated on the use of Confidential Funds within the maximum limits of the SAR for reasonable costs. With reference to:

(1) Paragraph 12.a. Yes, costs incurred in repairing and/or renovating leased living quarters by overseas employees do constitute a reimbursable addition to the estimated rental cost, provided the charge is reasonable in relation to the tenure of the lease and the obligation is reduced to writing if at all possible.

(2) Paragraph 12.b. Where occupancy is obtained on a month-to-month basis without a written agreement, the tenant's assumption of an obligation to keep the premises in repair would not generally warrant payment of repair and/or renovation costs. If it can be clearly demonstrated that the month-to-month nature of occupancy is only nominal, and that the anticipated tenure is sufficiently certain and long enough to make repairs or renovations reasonable, then the charge might be accepted. Otherwise, the claim would be one for consideration under the special provisions of GAI 19 or § 6.2 of the CFR.

(3) Paragraph 13. We should like to suggest a revision of the applicable certification to read:

> "I certify that the repairs and/or renovations made to my present quarters were required by the landlord as a condition of rental in my leasing agreement."

(4) Paragraph 14. GAI 19 and § 6.2 of the CFR may be applied as indicated above. We believe payment would most properly take the form of an apportionment over the period of the expected occupancy.

(5) Paragraph 15. While quarters allowances are administrative matters rather than operational, there does not appear to be any objection to paying the expense of repairs and/or renovations from operational funds and withholding quarters allowances when the lease is taken in the name of the Department of State.

(6) Paragraph 21.a. Yes, for the reasons given above in paragraph 6.

(7) Paragraph 21.b. Yes, see above paragraph 6.

9. We hope this answers your specific questions and provides a line of thought for those questions which fall in the border zone. We shall be pleased, of course, to give you our opinion in any special case, but if this memorandum has helped to crystalize any further facets of the problem, it might be well to examine them in advance to determine whether they are susceptible to a general analysis.

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